

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RAYMOND REDDITT (Deceased))	
Claimant)	
VS.)	
)	Docket No. 211,963
McDONALD'S RESTAURANT)	
Respondent)	
AND)	
)	
KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION SELF-INSURANCE FUND)	
Insurance Carrier)	

ORDER

This case comes before the Appeals Board on remand from the Court of Appeals. The Court of Appeals' opinion was filed October 8, 1999.

ISSUES

The Appeals Board originally awarded death benefits to Madie Redditt, the claimant and surviving spouse of the deceased employee Raymond Redditt. In so doing, the Appeals Board found that Ms. Redditt did not willfully or voluntarily desert or abandon the deceased employee. The Board made no specific finding as to whether or not there was a mutual abandonment of the marital relationship. The specific direction from the Court of Appeals is as follows:

"We remand this case to the Board to address the issue of mutual abandonment under K.S.A. 1998 Supp. 44-508(c)(2)."¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds there was a mutual abandonment of the marital relationship and, therefore, an award of death benefits to the surviving spouse must be denied.

¹ Redditt v. McDonald's Restaurant, 26 Kan. App. 2d 547, ___ P.2d ___ (1999).

The relevant facts in this case are well set out in the opinion of the Court of Appeals as well as in the prior Order by the Board dated November 25, 1997. Accordingly, they need not be repeated herein. Essentially, the Board found that the decedent and claimant were married in 1969, first separated in 1972, reunited briefly and then separated again in 1973. Although there was a brief attempt at reconciliation in 1978, the last time Mr. and Mrs. Redditt lived together as husband and wife was in March 1973.

In its original decision, the Appeals Board found that "because the decedent was the first to leave the marital relationship to live with another, claimant was not required to actively seek a reunion or reconciliation of the marriage to be eligible to receive benefits under the Act." The Court of Appeals found the Board's approach was too narrow, holding

"Mutual abandonment of a marital relationship will prohibit a surviving spouse from recovering death benefits under K.S.A. 1998 Supp. 44-508(c)(2). Mutual abandonment may result even though one party may have instigated a separation and be at fault for the parties' estrangement."²

The Court of Appeals further advised that "abandonment is not a static concept and should not be determined from a single act. Although this case presents the existence of a legal marriage, consideration should be given to the parties' conduct and circumstances over time to determine their intent."³

Quoting with approval from Estate of Garcia v. Industrial Com'n, 156 Ariz. 39, 41, 749 P.2d 948 (1988), which was, in turn, quoting from 2 A. Larson, Law of Workmen's Compensation, § 62.43 (1987), the Kansas Court of Appeals stated: "Even when the initial separation was involuntary and blameless, it may become converted over a long period of time into constructive desertion by the mutual acceptance of the separation and the deliberate assumption of new relationships."⁴

Finally, the Kansas Court of Appeals, quoting with approval from Brezickyj v. Eastern R. R. Builders, Inc., 397 N.Y.S.2d 452, 453-454, 59 App. Div. 2d 578 (1977), said:

The Workmen's Compensation Law is social legislation designed to secure to workers and their dependents compensation when they are injured or killed in the course of their employment, without regard to fault. Although it is true that a surviving wife need not prove her actual dependency, it can

² Redditt, at Syl. ¶ 3.

³ Redditt, at 556.

⁴ Redditt, at 553-554.

hardly be said under the facts of this case that the claimant was a dependent in any sense of the word. To find the claimant herein eligible for death benefits is to provide support for her, which decedent had not done for over 20 years.⁵

The Kansas Court of Appeals then summarized the salient facts as follows:

The current case presents a scenario where the parties had been separated over 20 years, living several hundred miles apart most of the time, and having no direct contact at all between 1986 and decedent's death in 1995. Claimant had a child in 1979 and did not name a father on the birth certificate and testified that the child's biological father could have been one of two men other than the decedent. Decedent had not provided claimant with financial support during the 10-year period before his death. The parties filed separate income tax returns. Claimant listed herself as "single" on credit applications and her child's school records. The claimant was not involved in making decedent's funeral arrangements.⁶

Applying these facts to the conclusions of law and statements of policy announced by the Court of Appeals, the Board finds that over the course of time there was not only an acceptance of the reality of her situation vis-a-vis her marital relationship with the decedent, but also a demonstrated preference for that separate existence, including the assumption of new relationships. Claimant and decedent had demonstrated a mutual preference for an end to their marital relationship in fact if not in law. Accordingly, the Board finds that there was a mutual abandonment under K.S.A. 1998 Supp. 44-508(c)(2). Death benefits to claimant are denied.

AWARD

WHEREFORE, it is the decision of the Appeals Board that the Award of Assistant Director Brad E. Avery dated April 4, 1997, and the Order of the Appeals Board dated November 25, 1997, should be, and are hereby, reversed and benefits are denied.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier.

⁵ Redditt, at 555.

⁶ Redditt, at 555.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Brian J. Fowler, Leawood, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director